TRANSMITTAL OF APPEAL BRIEF

Docket No.
CYB-07102/03

In re Application of: Charles Jacobus

Application No.	Filing Date	Examiner	Group Art Unit
09/785,385-Conf. #2386	February 16, 2001	D. Changkong	2152

Invention: DISTRIBUTED COMPUTING ENVIRONMENT

TO THE COMMISSIONER OF PATENTS:

Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed: January 22, 2008 .

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/John G. Posa/ Dated: April 22, 2008

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of: Jacobus

Serial No.: 09/785,385 Group No.: 2155

Filed: Feb. 16, 2001 Examiner: Lesniewski

For: DISTRIBUTED COMPUTING ENVIRONMENT

APPELLANT'S APPEAL BRIEF UNDER 37 CFR §41.37

Mail Stop Appeal Brief
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I. Real Party in Interest

The real party in interest in this case is Cybernet Systems Corporation, by assignment.

II. Related Appeals and Interferences

There are no appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims

The present application was filed with 23 claims. Claims 1-23 are pending, rejected and under appeal. Claims 1 and 11 are the independent claims.

IV. Status of Amendments

No after-final amendment has been filed.

V. Summary of Claimed Subject Matter

Independent claim 1 is directed to a distributed network computing environment. The environment includes a plurality of clients communicating within a multicast cloud distributed network

using content-specific data within messages to implement data routing and message culling in a groupware application; and one or more network routing modules or router-embedded applets operative, in addition to normal packet-routing, to permit or inhibit the distribution of a particular message based upon the content of the message. (Specification, page 8, line 17 to page 10, line 2).

Independent claim 11 is directed to a distributed network computing environment comprising a network-enabled client application. At least one lobby manager facilitates communications between the client application and a "federation." One or more network routing modules or router-embedded applets operative, in addition to normal packet-routing, to permit or inhibit the distribution of a particular message based upon the content of the message to reduce the communications with the federation (Specification, page 8, line 17 to page 10, line 2).

VI. Grounds of Rejection To Be Reviewed On Appeal

A. The rejection of claims 1, 3, 7-9, 11 and 14-23 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,138,144 to DeSimone et al. in view of U.S. Patent No. 5,841,980 to Waters.

B. The rejection of claims 4-6 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,138,144 to DeSimone et al. in view of U.S. Patent No. 5,841,980 to Waters.

C. The rejection of claims 2, 10, 12 and 13 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,138,144 to DeSimone et al. in view of U.S. Patent No. 5,841,980 to Waters, and further in view of U.S. Patent No. 6,015,348 to Lambright et al.

VII. Argument

A. Claims 1, 3-9, 11 and 14-23.

These claims stand rejected under 35 USC §103(a) over DeSimone et al. in view of Waters et al. The Examiner's reliance on a previous Board decision that "media type" is equivalent to "content" is not persuasive, since Appellant's current claims are significantly different. In particular, claim 1 was amended during prosecution to include the limitations of "*content-specific data within messages* to implement data routing and message culling" and the ability to "permit or inhibit the distribution of a particular message *based upon the content of the message*." Independent claim 11 also now includes the

ability to "permit or inhibit the distribution of a particular message based upon the content of the message."

Based upon Appellant's amendments, it should now be further evident that Appellant is using the ordinary and customary meaning for the word "content," namely "the topics or matter treated in a document or the like (in this case, a *message*)." See Webster's Collegiate Dictionary, Second Edition.

Claim 1 now makes it clear that the "content" is *data within the message*, and NOT "media type." The claim further dictates that the distribution of a particular message can be permitted or inhibited based upon the content of the message, which means *based upon data contained within the message*. This capability is neither taught nor suggested by DeSimone or Waters.

To establish a *prima facie* case of obviousness, there must be some suggestion or motivation to combine reference teachings; there must be a reasonable expectation of success, and the references when combined must teach or suggest all the claim limitations. In this case, even if the Examiner's proposed combination were to be justified, the limitations added to the independent claims would not be taught.

In paragraph 6 of the final Office Action, the Examiner concedes that "DeSimone did not explicitly state that his system could utilize message culling or traffic adjustment means to reduce communications between client terminals and the cloud." But this is not the point; rather, the question is whether DeSimone or the DeSimone/Waters combination teaches or suggests true content-based routing, but neither reference does so.

At the bottom of page 4 of the Final OA, the Examiner argues that DeSimone teaches "to permit or inhibit the distribution of a particular message based upon the content of the messages," citing DeSimone at 4:59-61 and 5:24-41. However, these passages do not teach what the Examiner says. In fact, DeSimone at 5:24-41 *teaches away* from Applicant's invention.

DeSimone at 4:59-61 reads as follows:

> "...client terminal 101-5 is a member of IP sub-network 112. IP sub-networks 110, 111 and 112 are interconnected through multicast capable IP routers 113 and 114."

Clearly this has nothing to do with permitting or inhibiting the distribution of a particular message based upon its content.

DeSimone at 5:24-41 reads as follows:

> "Upon receiving the set of sockets assigned to it for the conference, *the client may decide* how it wants to interact in the conference. Specifically, for each media

> type *the client may* only want to only receive, or to both receive and transmit, or to just transmit. Further, *the client may choose* to receive a particular media type from only select other clients on the conference. When a conference is established and a client joins an established conference, therefore, it receives a list of sockets used for transmitting by the other clients associated with the conference. At any time during the conference, it may then receive packets from the other clients in the conference on the sockets assigned for transmission to those other clients, *or it [the client] may choose not to receive packets* of any or all media types from other clients by either not adding the other client's socket(s) to its Multicast Receive Address List (MRAL), or by deleting the other client's socket from its MRAL if it was previously receiving transmissions from the other client."

Emphasis was added to show that it is the client and not data within the message that dictates what the client wants. Indeed, *this is the way DeSimone operates— the client decides how to interact in the conference, not the content of messages*. If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

B. Claims 4-6.

Claims 4-6 stand rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,138,144 to DeSimone et al. in view of U.S. Patent No. 5,841,980 to Waters. These claims include the limitation that clients enter, leave, and interact with the cloud through a lobby manager. The Examiner contends that this is taught in DeSimone at 5:5-23, but it is *not*:

> "Directory Server 106 functions to maintain a list of multicast IP addresses and ports available for use for a plurality of different and possibly concurrent conferences, to assign a subset of those addresses and ports to a particular conference when a conference is initiated, and to assign from that subset a unique multicast IP address and port number to each media type of each client as that client makes a request to become a member of that conference. Once each socket (multicast IP address and port number) is assigned to a particular client for each media type for use during a conference, the assigned multicast IP addresses are marked as being unavailable and cannot be assigned to any other client attempting to join that same conference. Once a participant departs a still ongoing conference, the multicast IP addresses assigned to that participants client are marked as being available and can be assigned to the client of a later joining participant. Directory Server 106 also assigns the ATM address of the special purpose MARS server 126 to be used by the ATM client terminals on the conference."

This passage says nothing about a "lobby manager," and the Examiner points to no section in particular in support of his argument.

B. Claims 2, 10, 12 and 13

These claims stand rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,138,144 to DeSimone et al. in view of U.S. Patent No. 5,841,980 to Waters, and further in view of U.S. Patent No. 6,015,348 to Lambright et al. "because it would be an ideal utilization of the network for a different purpose, specifically online gaming." Final OA, p. 9. Apart from the fact that there is no evidence in support of the Examiner's proposed combination, Lambright, like DeSimone, uses fixed zones. In contrast, Appellant's does not use fixed zones at all. Lambright is a variation on the Waters idea of fixed zones that client connects to keep traffic to a particular processor below a fixed limit, but includes the idea that the zones (they call sectors managed by a sector manager) are dynamically created based on client traffic. As such, even in combination, the Examiner's proposed combination would not be "an ideal utilization of the network for a different purpose, specifically online gaming." One cannot determine to which "network" the Examiner is referring, and the term "ideal" is undefined and without foundation.

Conclusion

In conclusion, for the arguments of record and the reasons set forth above, all pending claims of the subject application continue to be in condition for allowance and Appellant seeks the Board's concurrence at this time.

Respectfully submitted,

By:_____

Date: April 22, 2008

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APPENDIX A

CLAIMS ON APPEAL

1. A distributed network computing environment, comprising:

a plurality of clients communicating within a multicast cloud distributed network using content-specific data within messages to implement data routing and message culling in a groupware application; and

one or more network routing modules or router-embedded applets operative, in addition to normal packet-routing, to permit or inhibit the distribution of a particular message based upon the content of the message.

2. The environment of claim 1, wherein the application is a distributed simulation or game.

3. The environment of claim 1, wherein the application is a client-selectable and controllable data service associated with the distribution of audio, video, or other digital signal streams.

4. The environment of claim 1, wherein the clients enter, leave, and interact with the cloud through a lobby manager.

5. The environment of claim 4, wherein the lobby manager is further operative to validate the application in terms of compatibility and download data to correct for deficiencies.

6. The environment of claim 4, wherein the lobby manager is further operative to simultaneously support multiple clouds through multicast or replicated unicast protocols.

7. The environment of claim 1, wherein the routing modules implement application-specific message culling to reduce client-cloud communications.

8. The environment of claim 7, wherein the message culling includes message omission, rerouting, and other quality-of-service modifications.

9. The environment of claim 7, wherein the application communicates internal state changes into the cloud through an API.

10. The environment of claim 1, wherein the application is a massive groupware application involving thousands of world-wide participants.

11. A distributed network computing environment, comprising:

a network-enabled client application;

at least one lobby manager that facilitates communications between the client application and a federation; and

one or more network routing modules or router-embedded applets operative, in addition to normal packet-routing, to permit or inhibit the distribution of a particular message based upon the content of the message to reduce the communications with the federation.

12. The environment of claim 11, wherein the application is a distributed simulation.

13. The environment of claim 11, wherein the application is a game.

14. The environment of claim 11, wherein the application is a client selectable and controllable data service.

15. The environment of claim 14, wherein the data service includes audio, video, or other type of digital signal feed.

16. The environment of claim 11, wherein the routing modules further support a point-to-multipoint distributed communications model between clients.

17. The environment of claim 11, wherein:

at least some of the client applications run on host platforms; and

the routing modules further support conventional internet packet routing among the hosts.

18. The environment of claim 11, wherein the routing modules further support one or more conventional multicast protocols.

19. The environment of claim 11, wherein the application communicates internal state changes into the federation through an API.

20. The environment of claim 11, wherein the message culling includes message omission, rerouting, and other quality-of-service modifications.

21. The environment of claim 11, wherein the lobby manager is further operative to validate the client application compatibility with the federation and download data to correct for deficiencies.

22. The environment of claim II, wherein the lobby manager is further operative to simultaneous process multiple federations.

23. The environment of claim 22, wherein the federations communicate through multicast or replicated unicast protocols.

APPENDIX B

EVIDENCE

None.

APPENDIX C

RELATED PROCEEDINGS

None.